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In re Application of :
ROZENBERG, Yanina et al. :
US Application No.: 10/049,871 : DECISION ON
PCT Application No.: PCT/US00/22619 :
Int. Filing Date: 18 August 2000 : PETITION UNDER
Priority Date: 19 August 1999 :
Attorney's File Reference: 271010-473 : 37 CFR 1.42
For: TARGETED ARTIFICIAL GENE :
DELIVERY :

This decision is in response to applicant's facsimile of 08 April 2003 which is being treated as a renewed petition under 37 CFR 1.42 requesting acceptance of the application in the name of the legal representative of deceased co-inventor Viacheslav Medvedkin.

BACKGROUND

On 02 April 2003, this Office issued a decision dismissing applicants' petition under 37 CFR 1.42 and 1.47(a). The decision indicated that the legal representative of deceased co-inventor Viacheslav Medvedkin could make the necessary oath or declaration for the above-identified application and apply for a patent. The petition also indicated that the oath or declaration could be accepted without the signature of the legal representative if it could be shown that the known legal representative could not be found or reached after diligent effort or refused to make the application. The decision pointed out, however, that the applicants had not offered any evidence of any attempt to locate Viacheslav Medvedkin's legal representative.

On 08 April 2003, the applicants filed the present facsimile transmission including, inter alia,:

1) a declaration and power of attorney listing Yanina Rozenberg (Rozenberg) and W. French Anderson (Anderson) as co-inventors and also listing Rozenberg as the representative of deceased co-inventor Viacheslav Medvedkin and including the

signatures of Anderson, Rozenberg as co-inventor, and Rozenberg as representative of Viacheslav Medvedkin;

2) a copy of a Russian trust deed;

3) a translation of a Russian trust deed indicating, inter alia, that Natalia Medvedkin and Alexander Medvedkin, as wife and son of Viacheslav Medvedkin, have empowered Yanina Rozenberg to act as their representative before all competent authorities of the US in solving any problems concerned with the pension affairs of Viacheslav Medvedkin;

4) a copy of a transmittal letter including a certificate of mailing indicating a mail date of 16 September 2002 and indicating, inter alia, that the transmittal letter was accompanied by a declaration, a Russian trust deed, an English translation of a Russian trust deed, and a return post card receipt;

5) a copy of a post card receipt with a Patent & Trademark Office date stamp of 20 September 2002 and listing, inter alia, a declaration, a Russian trust deed, and an English translation of a Russian trust deed.

DISCUSSION

MPEP section 409.01(a), entitled "Prosecution of Administrator or Executor" states in part:

One who has reason to believe that he or she will be appointed legal representative of a deceased inventor may apply for a patent as legal representative in accordance with 37 CFR 1.42.

Application may be made by the heirs of the inventor, as such, if there is no will or the will did not appoint an executor and the estate was under the sum required by state law for the appointment of an administrator. The heirs should identify themselves as the legal representative of the deceased inventor in the oath or declaration submitted pursuant to 37 CFR 1.63 and 1.64.

It is not clear whether a legal representative of Viacheslav Medvedkin's estate has been appointed or is statutorily required to be appointed. If there is no legal representative, because none has been appointed and none is required to be appointed, application may be made by all of the heirs of Viacheslav Medvedkin. However, it is also unclear whether Natalia Medvedkin and Alexander Medvedkin are all of the heirs of Viacheslav Medvedkin.

The English translation of the Russian trust deed included with the facsimile of 08 April 2003, makes no mention of the above-identified patent application. In fact the trust deed makes no mention of any patent application or any invention at all. Accordingly, even if it was clear that no legal representative had been appointed nor was statutorily required to be appointed and even if it was further clear that Natalia Medvedkin and Alexander Medvedkin were all of the heirs of Viacheslav Medvedkin, this trust deed

would not empower Rozenberg to sign the declaration as legal representative of Viacheslav Medvedkin under 37 CFR 1.42.

Accordingly, applicants must provide a declaration executed by the legal representative of Viacheslav Medvedkin in accordance with 37 CFR 1.42 and 1.497. If, however, no legal representative has been appointed nor is statutorily required to be appointed, application may be made by all of the heirs of Viacheslav Medvedkin. If application is to be made by all of the heirs, applicants must provide a declaration executed by all of the heirs accompanied by a statement made by either all of the heirs or the agent indicating that 1) no legal representative has been appointed nor is statutorily required to be appointed and 2) the heirs signing the declaration are indeed all of the heirs of Viacheslav Medvedkin.

CONCLUSION


The petition under 37 CFR 1.47(a) is DISMISSED without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.42 and 1.47(a)." No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a). Failure to timely file a proper response to this decision will result in ABANDONMENT of the application.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.

Applicant is advised that, effective May 1, 2003, the Office is changing its correspondence address. Any further correspondence with respect to this matter deposited with the United States Postal Service on or after May 1, 2003 should be addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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